

**\*\* E-filed September 21, 2010 \*\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

No. CR09-00670 JW (HRL)

Plaintiff,

v.

DAVID FOLEY,

Defendant.

**ORDER DENYING GOVERNMENT'S  
MOTION FOR RE-PAYMENT FOR  
LEGAL SERVICES OF APPOINTED  
COUNSEL AND EXAMINATION OF  
FINANCIAL STATUS OF  
DEFENDANT PURSUANT TO 18  
U.S.C. § 3006A(f)**

**[Re: Docket No. 36]**

Defendant David Foley ("Foley") was indicted on July 1, 2009 for mail and wire fraud, conspiracy to commit mail and wire fraud, trafficking in counterfeit goods, trafficking in stolen goods, money laundering to conceal illegal activity, and conspiracy to commit money laundering. (Docket No. 1.) From before his indictment until June 6, 2010, Foley was represented by the Federal Public Defender ("FPD"). (Docket Nos. 2 & 37.) On June 6, though, the FPD was terminated, and since that time, Foley has been represented by Samuel Shepherd ("Shepherd") of the law firm Greenberg Traurig on a *pro bono* basis. (Docket No. 37.)

The Government then moved for an order to re-examine the financial capabilities of Foley and to require him to reimburse his previously-appointed counsel for reasonable attorneys' fees.<sup>1</sup>

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<sup>1</sup> If at any time after the appointment of counsel under 18 U.S.C.A. § 3006A the court finds that the person for whom counsel was appointed is financially able to obtain counsel or to make

(Docket No. 36.) This Court found good cause to seek further information and issued an interim order instructing Foley to submit another financial affidavit detailing his financial condition and Shepherd to submit Greenberg Traurig's representation agreement with Foley. (Docket No. 40.) Foley and Shepherd did so on July 23.

Upon review of the documents and information submitted by Foley and Shepherd, and despite the Government's claims, the Court does not believe that Foley is presently able to repay the funds expended by the FPD during its representation of him prior to June 6. Should his financial circumstances change, however, the Court is willing to revisit the Government's request.

Based on the foregoing, the Government's motion is DENIED.

**IT IS SO ORDERED.**

Dated: September 21, 2010

  
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 HOWARD R. LLOYD  
 UNITED STATES MAGISTRATE JUDGE

partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in Section 3006A(f), as the interests of justice may dictate. 18 U.S.C. § 3006A(c). Section 3006A(f) provides that the court may authorize or direct that such funds be paid to the appointed attorney, to the organization which provided the attorney, to any person or organization which has been authorized to render investigative, expert, or other services under § 3006A(e), or to the court for deposit in the Treasury as reimbursement. 18 U.S.C. § 3006A(f). Northern District of California General Order No. 2 similarly provides instructions to take action in the event a person with appointed counsel later has enough money to pay for an attorney. It states in relevant part: "If at the time of appointment or at any time thereafter the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, of that funds are available for payment from or on behalf of a person furnished representation, the court shall take appropriate action, which may include terminating the appointment of counsel, ordering partial payment by the person furnished representation, or permitting assigned counsel to continue to represent the party with part or all of the cost of the representation paid by the person furnished representation."<sup>1</sup> Gen. Order No. 2, Sec. I(D)(3) (emphasis added).

1 **CR09-00670 JW (HRL) Notice will be electronically mailed to:**

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5 **Counsel are responsible for distributing copies of this document to co-counsel who have not**  
6 **registered for e-filing under the court's CM/ECF program.**

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